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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

D. BRUCE OLIVER,

Plaintiff,

v.

DEPUTY LARRY G. NIELSON, SHERIFF
TODD RICHARDSON, DEPUTY BRENT E.
PETERS, DEPUTY KEVIN P. FIELDING,
DEPUTY M. DAVIS, DEPUTY ALAN
BLACK, DAVIS COUNTY SHERIFF'S
OFFICE, DAVIS COUNTY JAIL, DAVIS
COUNTY, JOHN DOES 1-10, JANE DOES
1-10, BLACK CORPORATIONS AND/OR
ENTITIES 1-10,

Defendants.

**MOTION TO DISMISS SECOND
AMENDED COMPLAINT ON BEHALF OF
DEFENDANTS NIELSON, RICHARDSON,
PETERS, FIELDING, AND COUNTY
ENTITIES**

Civil No. 1:16-cv-00155
Judge Jill N. Parrish

Pursuant to Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Deputy Larry G. Nielson ("Deputy Nielson"), Sheriff Todd Richardson ("Sheriff Richardson"), Deputy Brent E. Peters ("Deputy Peters"), Deputy Kevin P. Fielding ("Deputy Fielding"), Davis County Sheriff's Office ("DCSO"), Davis County Jail, and Davis County (collectively

“Defendants”), hereby request that this Court dismiss the claims set forth in Plaintiffs’ Second Amended Complaint for failure to adequately plead or state a claim.

BACKGROUND

Defendants moved for judgement on the pleadings with respect to Plaintiffs’ Amended Complaint on February 9, 2017.¹ Magistrate Judge Wells submitted a recommendation to grant the Motion in part.² This Court adopted the recommendation and dismissed from this case Defendants Davis County, Davis County Jail, Davis County Sheriff’s Office, Sheriff Richardson. This Court also dismissed the First Cause of Action against Deputies Peters and Fielding, and the Third Cause of Action entirely.³ The Court permitted Plaintiff to file an amended complaint for the limited purpose of correcting a typographical error in paragraph 30 of the pleading.⁴

On August 18, 2017, Plaintiff filed a Second Amended Complaint⁵ which was identical to the previous complaint with the exception of the correction to paragraph 30. All of the previously dismissed claims and Defendants remain in the Second Amended Complaint, having essentially been re-pled.⁶ On the same date, Plaintiff also filed a Motion to Amend.⁷ No proposed amended complaint was attached to the Motion, however, and in opposition⁸ Defendants expressed confusion as to what amendments Plaintiff was proposing, and if the

¹ Doc. No. 7.

² Doc. No. 13.

³ Doc. No. 16.

⁴ *Id.*

⁵ Doc. No. 19.

⁶ *Id.*

⁷ Doc. No. 18.

⁸ Doc. No. 21.

separately filed Second Amended Complaint was actually intended to serve as the proposed pleading.

Magistrate Judge Wells made the recommendation to deny the Motion to Amend,⁹ and this Court adopted that recommendation on December 4, 2017.¹⁰ That ruling also clarified that the Court intended to treat Doc. No. 19 as the current operative complaint in the lawsuit.¹¹

ARGUMENT

I. BECAUSE PLAINTIFF FAILED TO REMOVE THE DISMISSED CLAIMS AND DEFENDANTS BEFORE FILING THE SECOND AMENDED COMPLAINT, THE COURT MUST DISMISS THEM AGAIN.

Nothing has changed in Plaintiffs' Second Amended Complaint to remedy or address the reasons for the Court's dismissal of claims and Defendants pursuant to the Magistrate Judge's Recommendation. Indeed, Plaintiff himself stipulated to the dismissal of Davis County Jail and Davis County Sheriff's Office. *See* Recommendations, Doc. No. 13, at 3. This Court found that Plaintiffs' Second Cause of Action for municipal liability against Davis County failed to plead any facts showing a policy or custom that was the moving force behind the events described in the complaint. *Id.* at 7. It also found that Plaintiff failed to allege any facts to show that Sheriff Richardson was directly involved in the alleged violations of Plaintiff's rights. *Id.* at 6. And finally, the Court found that Plaintiff had failed to plead facts to show a continuing injury that would support his Third Cause of Action for injunctive relief. *Id.* at 8.

⁹ Doc. No. 24.

¹⁰ Doc. No. 26.

¹¹ Due to the confusion regarding Plaintiff's intent with respect to Doc. No. 19, it was not clear that this document required a responsive pleading or motion until this Court's December 4th Order. Therefore, Defendants are now filing the instant Motion and the concurrently filed Answer.

Despite the Court's Order, Plaintiff re-filed the same claims against the same Defendants in his Second Amended Complaint. The only difference between the Second Amended Complaint and the First Amended Complaint is the correction of a typographical error in paragraph 30, which this Court permitted Plaintiff to make.¹² Therefore, for the reasons already set forth in Defendants' Motion for Judgment on the Pleadings, the Magistrate Judge's Recommendation, and this Court's Order, the Second Amended Complaint should be dismissed as follows: Defendants Davis County, Davis County Jail, Davis County Sheriffs' Office, and Sheriff Richardson, should be dismissed as Defendants; and the Third Cause of Action for injunctive relief should be dismissed. To avoid repetition of arguments, Defendants incorporate by reference those arguments they made in briefing their Motion for Judgment on the Pleadings, as well as the analysis provided in the Magistrate Judge's Recommendation.

CONCLUSION

Plaintiff had no grounds to re-file dismissed claims against dismissed Defendants after this Court granted in part Defendants' Motion for Judgment on the Pleadings. Therefore, these claims and Defendants should again be dismissed.

DATED this 18th day of December, 2017.

DURHAM JONES & PINEGAR, P.C.

/s/ R. Blake Hamilton

R. BLAKE HAMILTON
ASHLEY M. GREGSON
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¹² Doc. No. 13, at 9.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served this 18th day of December 2017, via Utah District Court electronic filing system upon the following people, with a copy sent **via U.S. Mail** to:

D. Bruce Oliver
55 South Main
P.O. Box 146
Mayfield, UT 84643

/s/ Melani Thatcher